

Internal Revenue Service

Number: **201252009**

Release Date: 12/28/2012

Index Number: 856.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B01

PLR-121335-12

Date:

September 27, 2012

LEGEND

Taxpayer =

Subsidiary =

LP =

Company =

Parent =

LLC 1 =

LLC 2 =

Group =

Office Tower =

Accounting Firm =

State A =

State B =

State C =

Country A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

a =

b =

c =

d =

Dear

This responds to a letter dated May 9, 2012, and subsequent correspondence submitted on behalf of Taxpayer and Subsidiary. Taxpayer requests an extension of time under section 301.9100-1 and section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code to be treated as a real estate investment trust ("REIT") for the taxable year ending on Date 4. In addition, Taxpayer and Subsidiary request an extension of time under section 301.9100-1 and section 301.9100-3 to file an election for Subsidiary to be treated as a taxable REIT subsidiary of Taxpayer under section 856(l), effective as of Date 2.

FACTS

Taxpayer was formed as a State A corporation on Date 1 to serve as a reporting entity through which unrelated investors own and lease, to unrelated tenants, space in an office tower located in State B ("Office Tower").

Subsidiary, a subsidiary of Taxpayer, was formed on or before Date 2 to perform all impermissible tenant services necessary at Office Tower, such as the provision of services to the fitness center located at Office Tower.

On Date 3 Taxpayer and Subsidiary jointly filed Form 8875, Taxable REIT Subsidiary Election, to elect to treat Subsidiary as a taxable REIT subsidiary of Taxpayer, to take effect on Date 2.

Taxpayer's first taxable year ended on Date 4. Taxpayer was required to file its initial income tax return for its first taxable year by Date 7.

Taxpayer intended to file a Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, by Date 7, to extend the filing deadline of its Form 1120-REIT, U.S. Tax Return for Real Estate Investment Trusts, for the Year 1 tax year from Date 7 to Date 9, but, for the reasons set forth below, inadvertently missed the Form 7004 filing deadline.

LP owns all of Taxpayer's issued and outstanding common shares. LP is a State C limited partnership that was formed to pool the interests of unrelated investors that desired to invest in Office Tower. A consortium of unrelated institutional investors ("Outside Investors") and Company own a percent and b percent, respectively, of LP.

More than 100 unrelated investors own all of Taxpayer's issued and outstanding preferred shares. Taxpayer issued the preferred units to the unrelated investors within one year of its formation in accordance with the requirements of section 856(a)(5) and section 856(h)(2).

Taxpayer and Company own c percent and d percent, respectively, of LLC 1, a State C limited liability company, which owns all of the interest in LLC 2.

Company, the general partner of LP, is an indirect subsidiary of Parent, the top-tier publicly-traded parent corporation of Group.

Group's Tax Department was responsible for the U.S. tax reporting for the entities in the Office Tower holding structure, including Taxpayer. Group's Tax Department, which has personnel in Country A and the U.S., is comprised of seven Group employees holding Country A Chartered Accountant, U.S. attorney, and U.S.

Certified Public Accountant designations with extensive U.S. tax experience. These employees are responsible for a variety of tax matters including a substantial volume of U.S. tax compliance.

A confluence of factors, however, led to the Group's Tax Department's inadvertent failure to file Taxpayer's Form 7004 by Date 7 to extend Taxpayer's Year 1 Form 1120-REIT filing deadline to Date 9.

Group and the Outside Investors originally agreed to file Taxpayer's Year 1 Form 1120-REIT by Date 6. Prior to Date 6, however, Group's Tax Department determined that Taxpayer would not have any taxable income in Year 1. The parties agreed to forego the Date 6 internal deadline and to file Taxpayer's Year 1 Form 1120-REIT by Date 9 as part of the Tax Department's normal course of operations. Group, however, inadvertently failed to add Taxpayer to the list of entities for which the Group's Tax Department was required to file Form 7004.

Year 1 was the first year for which Taxpayer was required to file an income tax return. Therefore, Taxpayer did not appear on the prior year's list of entities for which the Group's Tax Department was required to file Form 7004. It did not occur to Group's Tax Department, until after Date 7, that a Form 7004 had to be filed for Taxpayer.

There were a number of personnel changes during the period from Date 5 to Date 7 within Group's Tax Department: (a) one employee unexpectedly resigned; (b) another employee went on disability leave; and (b) a third employee went on maternity leave. The employee on maternity leave also was involved in the acquisition of Office Tower. The other Group Tax Department personnel were not directly involved in that acquisition and, therefore, were not familiar with the new structure. With almost half of the Group Tax Department personnel temporarily absent, those remaining had to deal with a more significant work load and inadvertently missed the filing of the extension for Taxpayer.

The Vice President of Taxation of Parent, the head of Group's Tax Department, discovered the missed filing of Form 7004 for Taxpayer on Date 8 and promptly informed representative of Accounting Firm. Accounting Firm advised Parent that a request for 9100 relief should be filed with the Internal Revenue Service. The Vice President of Taxation of Parent immediately authorized this submission. The Group Tax Department is in the process of preparing all of the required Year 1 U.S. tax returns, including the Form 1120-REIT return for Taxpayer, and will file all of them by Date 9.

Taxpayer represents it was always Taxpayer's intention to be treated as a REIT and it has been conducting REIT testing since the first quarter of Year 1 and has met all the REIT requirements for the taxable year ended Date 4 (including taking care to have

at least 100 interest holders before the end of the second taxation year in satisfaction of the section 856(a)(5) requirement).

Furthermore, with respect to the election under section 856(c) of the Code, Taxpayer makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

Moreover, with respect to the election under section 856(l) of the Code, Taxpayer and Subsidiary make the following additional representations:

1. The request for relief was filed by Taxpayer and Subsidiary before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Taxpayer or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election applies than that they would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer and Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Subsidiary did not choose to not file the election.

In addition, affidavits on behalf of Taxpayer and Subsidiary were provided with the submission, as required by section 301.9100-3(e) of the Regulations.

LAW AND ANALYSIS

Section 856(c)(1) of the Code provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to section 1.856-2(b), the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the elections, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) of the Income Tax Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and

circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 856(c) to be treated as a REIT for its taxable year ending Date 4. Accordingly, Taxpayer is granted a reasonable extension of time of 60 days to make an election under section 856(c) to be treated as a REIT for its taxable year ending Date 4.

Moreover, we conclude that Taxpayer and Subsidiary have shown good cause for granting a reasonable extension of time to elect to have Subsidiary treated as a taxable REIT subsidiary under section 856(l) of the Code. We further conclude that Date 2, which is the date on which Taxpayer and Subsidiary intended the election to be effective, is the effective date of the election.

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 856(c) of the Code and Taxpayer's and Subsidiary's election under section 856(l) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a taxable REIT subsidiary of Taxpayer under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer or Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Diana Imholtz
Diana Imholtz
Chief, Branch 1
Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes